

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0273P
Sales Tax
For the Years 1999-2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration- Ten Per Cent (10%) Negligence Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

The taxpayer is a retailer in the food and beverage industry. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales and use tax, interest, and penalty. The taxpayer protested the imposition of the ten percent (10%) negligence penalty. A telephone hearing was held on July 23, 2003.

I. Tax Administration- Ten Per Cent (10%) Negligence Penalty

DISCUSSION

The taxpayer protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. The taxpayer contends that the negligence penalty is inappropriate in this situation because there was no willful failure to pay tax and the tax due as a result of the audit is a small percentage of the tax it paid during the audit period.

Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and

follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The department's standard for the negligence penalty, as stated in the regulation, is significantly lower than willful nonpayment of tax as argued by the taxpayer. Rather, the penalty can be properly imposed when the taxpayer is inattentive to its duties or disregards department's instructions. In this case, the taxpayer repeatedly failed to pay tax on clearly taxable canned computer software and signage. This failure to follow departmental instructions constitutes negligence.

FINDING

The taxpayer's protest is denied.

KMA/JMM/JMS--033107